

Pt. 900 (Note)

7 CFR Ch. X (1–1–98 Edition)

SOURCE: 61 FR 20717, May 8, 1996, unless otherwise noted.

§900.80 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§900.81 Definitions.

As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term *Act* means Public Act No. 10, 73 Congress (48 Stat. 31) as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended.

(b) The term *Department* means the United States Department of Agriculture.

(c) The term *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) The term *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(e) The term *proceeding* means a proceeding before the Secretary arising under sections 8a, 8b(b), 8c(14), 8e, 10(c) and 10(h).

(f) The term *hearing* means that part of the proceeding which involves the submission of evidence.

(g) The term *marketing agreement* means any marketing agreement or any amendment thereto which may be entered into pursuant to section 8b of the act.

(h) The term *marketing order* means any order or any amendment thereto which may be issued pursuant to section 8c of the act, and after notice and hearing as required by said section.

(i) The term *handler* means any person who, by the terms of a marketing order or marketing agreement, is subject thereto, or to whom a marketing order or marketing agreement is sought to be made applicable.

(j) The term *importer* means any person who, by the terms of section 8e of the act, is subject thereto.

(k) The term *person* means any individual, corporation, partnership, association, or any other business unit.

§900.82 Stipulation procedures.

The Administrator, or the Administrator's representative, may, at any time before the issuance of a complaint seeking a civil penalty under the Act, enter into a stipulation with any handler or importer in accordance with the following procedures:

(a) The Administrator, or the Administrator's representative, shall give the handler or importer notice of the alleged violation of the applicable marketing order or marketing agreement, or the requirements issued pursuant to 7 U.S.C. 608b(b) and 7 U.S.C. 608e, and an opportunity for a hearing thereon as provided by the Act;

(b) In agreeing to the proposed stipulation, the handler or importer expressly waives the opportunity for a hearing and agrees to pay a specified civil penalty within a designated time;

(c) The Administrator, or the Administrator's representative, agrees to accept the specified civil penalty in settlement of the particular matter involved if it is paid within the designated time;

(d) In cases where the handler or importer does not pay the specified civil penalty within the designated time, or the handler or importer does not agree to the stipulation, the Administrator may issue an administrative complaint; and

(e) The civil penalty that the Administrator may have proposed in a stipulation agreement shall have no bearing on the civil penalty amount that the Department may seek in a formal administrative proceeding against the same handler or importer for the same alleged violation.

Subpart—Procedure Governing Meetings To Arbitrate and Mediate Disputes Relating to Sales of Milk or Its Products

AUTHORITY: Sec. 3, 50 Stat. 248; 7 U.S.C. 671.

§900.100 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§900.101 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term *Act* means section 3 of the Agricultural Marketing Agreement Act of 1937, as amended (50 Stat. 248, as amended; 7 U.S.C. 671);

(b) The term *Department* means the United States Department of Agriculture;

(c) The term *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead;

(d) The term *General Counsel* means the General Counsel of the Department;

(e) The term *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any of-

Agricultural Marketing Service, USDA

Pt. 900 (Note)

ficer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) The term *Service* means the Agricultural Marketing Service.

(g) The term *Division* means the Dairy Division of the Service.

(h) The term *cooperative* means any association, incorporated or otherwise, which is in good faith owned or controlled by producers, or organizations thereof, of milk or its products, and which is bona fide engaged in the collective processing or preparing for market or handling or marketing, in the current of interstate or foreign commerce, of milk or its products;

(i) The term *arbitrator* means any officer or employee of the Service designated by the Administrator, pursuant to the Act, to arbitrate a bona fide dispute with reference to the terms and conditions of the sale of milk or its products between a producer cooperative and purchasers, handlers, processors, or distributors of milk or its products;

(j) The term *mediator* means any officer or employee of the Service designated by the Administrator, pursuant to the act, to mediate a bona fide dispute with reference to terms and conditions of the sale of milk or its products between a producer cooperative and purchasers, handlers, processors, or distributors of milk or its products;

(k) The term *hearing clerk* means the hearing clerk, United States Department of Agriculture, Washington, DC.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7797, Aug. 22, 1961, 28 FR 579, Jan. 23, 1963; 37 FR 8059, Apr. 25, 1972]

§ 900.102 Filing of applications for mediation or arbitration.

All applications for mediation or arbitration, all submissions, and all correspondence regarding mediation or arbitration shall be addressed to the Secretary, attention of the Division.

§ 900.103 Application for mediation.

An application for mediation by cooperative shall be in writing and shall include the following information:

(a) Names in full of the parties to the dispute and their addresses;

(b) Description of the cooperative organization and business, including copies of the articles of incorporation or association, by-laws, and membership contract; information regarding the number of shares of outstanding stock and the approximate portion owned by active producers; a statement of the function performed in connection with the collective processing, preparing, handling, or marketing of milk or its products; and data relative to the distribution of membership by States, the distribution by States of plant facilities for collecting, processing,

or disposing of milk or its products, and the business operations for the year last past, including the total quantity of milk and its products handled by the applicant and the proportion of that quantity that was sold in States other than the States of production;

(c) Suggested time and place for meeting between parties and mediator.

§ 900.104 Inquiry by the Administrator.

Upon receipt of an application for mediation, the Administrator, through such officers or employees of the Service as he may designate, may make any inquiry which is deemed to be necessary or proper in order to determine whether a bona fide dispute exists.

§ 900.105 Notification.

The Administrator, acting on behalf of the Secretary will notify the applicant as to whether he considers that mediation will effectuate the purpose of the act and as to whether he will mediate.

§ 900.106 Assignment of mediator.

The Director of the Division shall assign a mediator, from the group designated by the Administrator, to act in such capacity.

§ 900.107 Meetings.

All meetings held pursuant to §§ 900.103 to 900.109 shall be held with and under the direction of the mediator.

§ 900.108 Mediator's report.

The mediator, upon the completion of mediation proceedings, shall submit to the Administrator a complete report on such proceedings.

§ 900.109 Mediation agreement.

An agreement arrived at by mediation shall not become effective until approved by the Secretary, and the Secretary will not approve an agreement if there is evidence of fraud, if there is a lack of evidence to support the agreement, or if the agreement provides for any unfair trade practice.

§ 900.110 Application for arbitration.

An application for arbitration by a cooperative shall be in writing and shall contain the following information:

(a) Names in full of the parties to the dispute and their addresses;

(b) The same information required under § 900.103(b);

(c) Concise statement of dispute to be submitted;

(d) Originals or certified copies of all contracts, if any, involved in the dispute, and of correspondence which has passed between the parties and of any other documents or information relied upon;

(e) Dates before which it is desired that the hearing shall be had and the award shall become effective;